

**GRG Automotive Warehouse, Inc. and Automobile Mechanics Local No. 701, International Association of Machinists and Aerospace Workers, AFL-CIO. Case 13-CA-32392**

September 19, 1994

**DECISION AND ORDER**

BY MEMBERS STEPHENS, DEVANEY, AND  
BROWNING

Upon a charge filed by the Union on April 1, 1994, the General Counsel of the National Labor Relations Board issued a complaint on July 7, 1994, against GRG Automotive Warehouse, Inc. (the Respondent), alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On August 15, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On August 17, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated August 3, 1994, notified the Respondent that unless an answer were received by August 10, 1994, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a corporation, with an office and place of business in Elgin, Illinois, has been engaged in truck repair. During the 12 months preceding issuance of the complaint, Respondent purchased and received at its Elgin, Illinois facility goods valued in ex-

cess of \$50,000 directly from points outside of the State of Illinois, and provided services valued in excess of \$50,000 for Emery Air Charter and Consolidated Freightways, Inc., enterprises within the State of Illinois that are directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The following employees of Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All hourly employees in the occupations of Industrial Truck Mechanic, Journeyman, Battery Repair, A & B, Painter, A & B, Welder Fabricator Journeyman, and Garageman, Planned Maintenance Technician, and/or the job classification of Learner, employed by the Respondent, excluding all office and plant clerical employees, casual employees, technical employees, guards, professional employees, supervisors, as defined in the Act and all other persons employed by the Respondent.

On June 24, 1953, the Union was certified as the exclusive collective-bargaining representative of the unit. At all times since June 24, 1953, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

At all material times, the Respondent and the Union have been parties to a collective-bargaining agreement, effective from November 1, 1993, through October 31, 1996.

Since January 1994, Respondent has refused to adhere to the terms and conditions of the agreement by failing to remit contributions to the Automobile Mechanics Union Local No. 701 Union and Industry Welfare Fund and to the Pension Fund as required by the agreement.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. Respondent engaged in the conduct described above without the Union's consent.

**CONCLUSION OF LAW**

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5), Section 8(d), and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing, since January 1994, to make contractually required payments to various fringe benefit funds, we shall order the Respondent to make whole its unit employees by making all payments that have not been made since January 1994, and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

## ORDER

The National Labor Relations Board orders that the Respondent, GRG Automotive Warehouse, Inc., Elgin, Illinois, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Failing and refusing to bargain with Automobile Mechanics Local No. 701, International Association of Machinists and Aerospace Workers, AFL-CIO as the exclusive collective-bargaining representative of the employees in the following unit by failing to make contractually required contributions to fringe benefit funds on behalf of unit employees:

All hourly employees in the occupations of Industrial Truck Mechanic, Journeyman, Battery Repair, A & B, Painter, A & B, Welder Fabricator Journeyman, and Garageman, Planned Maintenance Technician, and/or the job classification of Learner, employed by the Respondent, excluding all office and plant clerical employees, casual employees, technical employees, guards, professional employees, supervisors, as defined in the Act and all other persons employed by the Respondent.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make all required contributions to fringe benefit funds on behalf of the unit employees that have not been made since January 1994 and make the unit employees whole for any loss of benefits or expenses resulting from its unlawful failure to do so, as set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Elgin, Illinois, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. September 19, 1994

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James M. Stephens,	Member
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Dennis M. Devaney,	Member
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Margaret A. Browning,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT fail and refuse to bargain with Automobile Mechanics Local No. 701, International Association of Machinists and Aerospace Workers, AFL-CIO as the exclusive collective-bargaining representative of the employees in the following unit by failing to make contractually required contributions to fringe benefit funds on behalf of unit employees:

All hourly employees in the occupations of Industrial Truck Mechanic, Journeyman, Battery Repair, A & B, Painter, A & B, Welder Fabricator Journeyman, and Garageman, Planned Maintenance Technician, and/or the job classification of Learner, employed by us, excluding all office and plant clerical employees, casual employees, tech-

nical employees, guards, professional employees, supervisors, as defined in the Act and all other persons employed by us.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make all required contributions to the fringe benefit funds on behalf of the unit employees that have not been made since January 1994, and WE WILL make them whole for any loss of benefits or expenses resulting from our unlawful failure to do so.

GRG AUTOMOTIVE WAREHOUSE, INC.